

MEMORANDUM OF UNDERSTANDING
BETWEEN
AUBURN POLICE OFFICERS ASSOCIATION
AND
CITY OF AUBURN

July 1, 2021 through June 30, 2023

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CITY RIGHTS AND RESPONSIBILITIES

City retains, solely and exclusively, all the rights, powers and authority exercised or held prior to the execution of this Memorandum of Understanding, except as expressly limited by a specific provision of this Memorandum of Understanding. Without limiting the generality of the foregoing, the rights, powers and authority retained solely and exclusively by City and not abridged herein include, but are not limited to, the following, subject to the requirements of this Memorandum of Understanding and/or any provision of law whether it be statutory or judicial:

To manage and direct its business and personnel; to manage, control and determine the mission of its departments, building facilities and operations; to create, change, combine or abolish jobs, departments and facilities in whole or in part; to subcontract or discontinue work for economic or operational reasons; to direct the work force; to increase or decrease the work force and determine the number of employees needed; to hire, transfer, promote and maintain the discipline and efficiency of its employees to establish work standards, schedules of operation and reasonable work load; to specify or assign work requirements and require overtime; to schedule working hours and shifts; to adopt rules of conduct and penalties for violation thereof; to determine the type and scope of work to be performed and the services to be provided; to determine the methods, processes, means and places of providing services and to take whatever action necessary to prepare for and operate in an emergency.

Nothing in this Section shall be construed to limit, amend, decrease, revoke or otherwise modify the rights vested in the City by any law regulating, authorizing or empowering the City to act or refrain from acting.

PREAMBLE

This Memorandum of Understanding, hereinafter sometimes referred to as the "Agreement," entered into by and between the City of Auburn, hereinafter sometimes referred to as the "City," and the Auburn Police Officers Association, hereinafter sometimes referred to as the "Association," has as its purpose the establishment of an equitable and peaceful procedure for the resolution of differences and the establishment of rates of pay, hours of work and other conditions of employment for employees in the Police Service bargaining unit, as provided in the following Agreement.

SECTION 1.0
RECOGNITION

A. RECOGNITION

The City recognizes the Association as the exclusive representative of those employees within the bargaining unit for the purpose of meeting and conferring in good faith on matters within the mandatory scope of representation, pursuant to California Government Code Section 3500.

SECTION 2.0
ASSOCIATION RIGHTS

A. ACCESS TO EMPLOYEE WORK LOCATIONS

Representatives of the Association shall have the right of reasonable access to bargaining unit members outside of their assigned duties, before and after work hours, at meal and break periods, and at other non-work times with the approval of the City Manager or his/her designee.

B. DISTRIBUTION AND POSTING OF ASSOCIATION LITERATURE

The Association may use bulletin boards designated for its use in appropriate places. All items to be posted shall be officially authorized by the Association and shall bear the date of posting.

C. USE OF CITY FACILITIES

The City Manager or employees' designee, upon request, may permit the Association to use facilities, depending upon availability of space, for fleeting purposes at no charge. No request for use of City facilities shall be unreasonably denied.

D. DUES DEDUCTION

1. The City agrees that after receipt of a voluntary written and signed authorization from an employee, it will deduct from the wages of said employee the amount of monthly dues as certified on such form and forward said amount to the Association. Upon voluntary written notification by the employee indicating that the employee is no longer a member of the Association, the City will cease to deduct monthly dues from the employee's wages.
2. The Association agrees to indemnify, defend and hold the City harmless against all claims, demands, expenses, judgments or other liability on account of dues or charges collected by the City pursuant to this Agreement and paid over to the

Association. The City will report to the Association on a monthly basis the amounts of dues forwarded to Association accounts. The Association agrees to refund to the City any amounts paid to it in error upon presentation of proper evidence thereof.

E. DISCRIMINATION

The City and Association agree not to discriminate against any employee for the employee's membership in, activity on behalf of or other means of lawful participation or refraining from participation in the Association which are authorized and protected by statutory law, Memorandum of Understanding or City Code, Ordinance or Resolution.

SECTION 3.0
GRIEVANCE PROCEDURE

A. PURPOSE

In order to establish harmonious and cooperative relationships between the City and its employees and to keep open channels of communication, it shall be the City's policy to provide for the settlement of differences through an orderly grievance procedure. It is the City's policy to assure its employees the right of access to this procedure, free from interference, restraint, coercion or reprisal for its reasonable use. The procedure applies to all employees of the City in the bargaining unit.

B. DEFINITION OF GRIEVANCE

A grievance is a complaint of an employee or group of employees alleging unfair treatment resulting from a management decision, or concerning the interpretation or application of this Agreement, or the City rules or regulations governing personnel practices or working conditions within the control of management and for which there are no other procedures in existence which may be used to resolve such as governed by Sections 1200, et seq., of the City's Personnel Rules. Disciplinary Actions and Appeals are governed by Sections 1300, et seq., of the City's Personnel Rules, and Government Code Sections 3300-3311.

C. EMPLOYEE'S RIGHT TO REPRESENTATION

An employee shall have the right to be represented by an employee representative at all times and at every formal step in the grievance procedure. An employee shall have the right to be represented by an Association agent or attorney at all times and at every step in the formal grievance procedure.

D. INFORMAL GRIEVANCE PROCEDURE

All persons having a grievance shall make every effort to resolve such grievance by discussion with employees' immediate supervisor prior to submission of a formal grievance.

E. FORMAL GRIEVANCE PROCEDURE

1. In the event that a settlement is not effected after the informal review, the written grievance will be presented within ten (10) working days to the department head. The department head shall have ten (10) working days to investigate and render a written decision. Unless an extension of time has been agreed upon subject to confirmation in writing, failure of the department head to render a written decision within ten (10) working days shall constitute a denial of the grievance, and the grievant shall proceed to and be governed by the time limitations of step 2 of this procedure.
2. If a mutually satisfactory solution has not been reached, the grievant has five (5) working days to submit the grievance to the City Manager. The City Manager shall have ten (10) working days after receipt of the grievance in which to schedule such investigations or hearings as may be necessary and render a written decision. Unless an extension of time has been agreed upon subject to confirmation in writing, failure of the City Manager to render a written decision within ten (10) working days shall constitute a denial of the grievance and the grievant shall proceed to and be governed by the time limitations of step 3 of this procedure. The time for processing a grievance shall not exceed thirty-five (35) days.
3. Mediation Process
This procedure shall apply to disputes involving the interpretation and application of the MOU, including prevailing past practice or a negotiated personnel rule or regulation other than employee discipline.
 - a. An appellant will be referred to mediation if the appellant is not satisfied with the disposition of the City Manager's review step of the procedure.
 - b. Within (5) working days of the conclusion of the City Manager review the appellant must notify the employer in writing of the appellant's desire to refer the matter to mediation. The employer shall respond within (10) working days to the appellant and contact California Public Employment Relations Board (PERB) to schedule a mediation hearing.
 - c. Mediation conferences will take place at a mutually convenient location and shall not be open to parties other than those who are direct parties in the action.

- d. Proceedings before the mediator shall be confidential, informal in nature and shall not be admissible in any subsequent hearing. No transcript or record of the mediation conference shall be made. The mediator shall attempt to ensure that all necessary facts and considerations are revealed to him/her. In the event a resolution is reached, the matter shall be reduced to writing. In the event that a resolution is not reached, the parties may stipulate the unresolved issues in writing and submit them to the City Council within five (5) working days, in which case the grievant may resort to step 4 of this procedure. The costs of mediation, if any, shall be borne equally by the parties. (However, each party shall bear its own costs for travel, witnesses, etc.)

4. Public Hearing before City Council

- a. If the grievant gives written notice to the City Manager in the time permitted by paragraph 3.d. above that he or she wishes to submit the unresolved issues to the City Council, the City Clerk shall give notice of a public hearing before the City Council on the unresolved issues at least ten (10) working days before the hearing. Upon written request by the grievant, the hearing shall be closed to the public. The grievant may obtain one (1) continuance of a hearing without a stated reason provided the grievant does so in writing before the day of the hearing. The City Manager shall issue a written notice of continuance. Any subsequent continuance must be for good cause. Unless the City Manager issues a written notice of continuance, for subsequent continuance requests, the hearing shall take place on the date, time, and location specified in the notice of public hearing. A grievant's failure to attend or to be represented at the public hearing shall constitute an abandonment of the grievance on the unresolved issues and a failure to exhaust administrative remedies.
- b. The public hearing (or closed hearing, if elected by grievant) on the unresolved issues shall be conducted by the City Council on the date, time and location specified in the notice of public hearing or continuance. The parties may appear and offer evidence, call witnesses, and cross examine witnesses consistent with California Code of Civil Procedure section 11513, concerning the unresolved issues. After such public hearing, the City Council shall deliberate in closed session to the extent permitted under the Ralph M. Brown Act and render a written decision and factual findings which identify support from the record.
- c. The City Council's decision on the grievance shall be subject to judicial review in the manner specified in Code of Civil Procedure §1094.5.

SECTION 4.0
HOURS OF WORK AND OVERTIME

A. FORTY-TWO (42) HOUR WEEK

1. A fourteen (14) day cycle will be used and during that fourteen (14) days, each sworn employee below the rank of Lieutenant will work eighty-four (84) hours.
2. Each employee who works this shift will receive four (4) hours of pay at time and one-half.
3. Pay periods are bi-weekly, resulting in twenty-six (26) pay periods per calendar year.
4. Overtime will be based on hours in excess of eighty (80) hours in a two (2) week period.
5. Use of vacation and sick leave will be charged on an hour-for-hour basis.
6. The scheduling concepts to be used within this framework may include twelve (12) hour shifts and other shifts that will increase police coverage and give more consecutive days off to employees.
7. The department shall give written notice to the employee of a change in an employee's work schedule. A change in an employee's work schedule shall be in effect for not less than seven (7) calendar days unless the employee, in writing, consents to a lesser period. Failure to give such notice, in writing, shall entitle the employee to two (2) hours compensation at straight time rate of pay (for example; a change from 8-to-5 to 1-to-9 without seven days' advance notice shall entitle the employee to the two (2) hours additional compensation).

B. OVERTIME AND OVERTIME COMPENSATION

1. For regular employees subject to regulation of the Department of Labor in the bargaining unit, any work required in excess of their normal workday and workweek (non-cumulative) shall be classed as overtime work.
2. Overtime work, when directly ordered by the department head or the City Manager, shall be compensated by pay at the rate of time-and-one-half the straight time rate or time off with pay at a rate of time-and-one-half the straight time rate, at the option of the employee. Compensatory time off may be accumulated up to ninety (90) hours, and the accumulation may continue beyond the fiscal year if approved by the City Manager. Overtime work beyond the ninety (90) hours accumulation limit will be compensated by cash payment at the time-and-one-half rate. Notwithstanding the forgoing, at the sole discretion of the City Manager, and on a

case-by-case basis, cash payment for less than ninety (90) accumulated hours may be paid. However, Police Department employees may have the option of receiving all accumulated CTO in cash upon separation from the City.

3. Subject to the limitation of section 4.(B)(2) above, the City agrees to allow Auburn Police Department personnel, at the individual's option, to accumulate overtime and receive lump sum payoff as follows:
 - a. Accumulate from July 1 through November 30, with payoff on the first payday in December.
 - b. Accumulate from December 1 through June 30, with payoff on the first payday in July.
 4. Sworn personnel shall receive a minimum of four (4) hours at time-and-one-half rate (6 hours) for non-canceled, subpoenaed court time during off-duty hours. Actual court time in excess of four (4) hours shall be paid at the rate of time-and-one-half the straight time rate. Unless given twenty-four (24) hours' notice of cancellation, sworn personnel shall be compensated at a rate of two (2) hours overtime (which equals 3 hours of straight time).
 5. Stand-by duty requires the employee so assigned:
 - a. To be ready to respond to calls for service; and
 - b. To be reachable by telephone or radio; and
 - c. To refrain from activities which might impair his/her ability to perform his/her assigned duties.
 6. Stand-by for court duty may only be assigned by a department head or his/her designated representative.
 7. Stand-by duty shall be compensated at a flat rate of Twelve Dollars (\$12.00) for weekdays and Fifteen Dollars (\$15.00) for weekends and holidays, for eight (8) hours (one normal shift) of stand-by duty, or any portion thereof, and shall be paid for in the pay period it is earned.
- C. CALL OUT (Also See Side Letter – Attachment A)
1. When an employee, after completing his normal work shift and leaving his work station, responds to an authorized order to return to duty to perform emergency or non-scheduled services, the employee shall be compensated by the payment of two (2) hours of base rate pay at the straight time rate for the call out and pay at the rate of time-and-one-half of base rate for the time actually worked during the call out.

Call out pay can also be compensated by time off with pay at the rate stated immediately above.

2. The Chief of Police or proper designee shall not cancel a safety employee's shift and place the employee on CTO leave without a minimum of twenty-four (24) hours' notice prior to said shift. A safety employee who requests compensating time off (CTO) shall make the request not less than twenty-four (24) hours prior to the requested time off. The above conditions may be waived by mutual consent of both parties.
3. Where a safety employee's normal work shift has been changed by the City more than two (2) hours, with less than eight (8) hours' notice, said employee shall be eligible for call out pay for said shift. In the event that the work shift change reduces the employee's two-week work period to less than eighty-four (84) hours, call out pay will not apply. This does not pertain to officers assigned to floating relief schedules.
4. The City agrees with the Association to provide seven (7) days' notice prior to changing an employee's days off pursuant to Section A.7., with the condition that departmental, emergency operational needs may preempt such advance notice.
5. Call out pay does not apply to sign-up overtime for outside assignments those for which another entity actually reimburses the City for the overtime.
6. When an employee is given an option to work or not, call out pay does not apply; however, the person giving the option must make it clear that if the employee accepts the work assignment, there will be no call out pay.

D. TRAINING

Training shall be compensated on an hour for hour basis. Lunch will not be provided while participating in City approved training programs.

In each fiscal year during the term of this two-year agreement, City will authorize leave time and pay for attendance for one (1) representative of the Auburn Police Officers Association to attend a mutually agreed upon professional seminar, workshop, or conference for POA related training. City Manager and/or other City representative can or may also attend with the Auburn Police Officers Association representative.

SECTION 5.0
SALARY ADMINISTRATION

A. SALARIES/SPECIAL SALARY ADJUSTMENTS

1. Salary Increase

- July 1, 2021- Patrol Officers shall receive 3% COLA- 2% will be retro from July 1, 2020- June 30, 2021 and 1% salary increase effective July 1, 2021. Detectives shall receive 3% on the first pay period following approval of the MOU.
- January 2022- 2.5% one-time bonus (ARA Funding)
- July 2022- 3% COLA
- January 2023- 2.5% one-time bonus (ARA Funding)

2. Financial ability to meet future equity adjustments

It is mutually agreed that the City of Auburn may have limited financial ability to pay future salary increases, and such ability is entirely dependent upon the economic conditions that prevail in the community and legislative actions of the State of California. The City Manager, Administrative Services Director and representatives of the Association will meet each year, after the adoption of budgets for both the City of Auburn and the State of California, to review the status of forecasts for all major revenue components for the City's General Fund, including:

- Property tax revenue forecasts consistent with information received from the Placer County Auditor-Controller;
- Adjustments to City of Auburn Assessed Valuation received from the Placer County Auditor-Controller, primarily as it impacts the amount of Property Tax received in lieu of Motor Vehicle License Fees; and
- Sales tax forecasts consistent with information received from the State of California Board of Equalization.

In the event there are delays in the adoption of the State Budget, any scheduled salary adjustments referenced in this Memorandum of Understanding may be implemented retroactively to the beginning of the fiscal year (July 1st)

Recognizing that the above referenced revenue sources represent approximately two-thirds of all General Fund revenue received by the City, any legislative change in the allocation formulas used for distributing property taxes, sales taxes or property tax in-lieu of motor vehicle license fees that decreases the amount of such revenues received by the City, shall result in the suspension of any COLA increase referenced in this Memorandum of Understanding. Furthermore, in the event sales tax receipts received are less than the amount set forth in the adopted budget, such event shall also result in the suspension of any

salary increase referenced in this Memorandum of Understanding. The City will meet with the Association as soon as practical to discuss any such COLA increase suspension. No other provision of this agreement is subject to this reopening clause.

Additionally, during the term of this agreement, in the event the City declares a fiscal emergency and the City's general fund reserves fall to a level 1.2 million dollars below existing levels, as of July 1, 2020, any remaining subsequent salary increase shall be cancelled.

Detective Assignment Incentive- While being assigned to the Detectives Unit all Detectives and SRO will receive a 2.5% Incentive assigned to the Detective base pay rate effective October 24, 2017.

3. Police Officer Service Retention Credit

- a. Employees who complete one (1) year of City service shall receive one percent (1%) of salary beginning with the first pay period of their second year.
- b. Employees who complete two (2) years of City service shall receive two percent (2%) of salary beginning with the first pay period of their third year.
- c. Employees who complete three (3) years of City service shall receive three percent (3%) of salary beginning with the first pay period of their fourth year.
- d. Employees who complete four (4) years of City service, shall receive four percent (4%) of salary beginning with the first pay period of their fifth year.

4. Evaluation of incentives and certification benefits to build continuity throughout the organization – to be completed by 7/1/2022.

B. STATUS CHANGES

1. Salary at Time of Employment

This plan may provide a flat salary rate or a salary range for each classification with a minimum, maximum and one or more intermediate steps. The beginning or normal hiring rate shall usually be at the first step of the range. Every new employee shall be paid the first step on employment, except that the City Manager or other appointing authority may authorize employment at a higher step if the labor supply is restricted or the person to be hired is unusually qualified. Such offer must be in writing and supported by documentation.

2. Change in Pay upon Promotion

When an employee is promoted, he/she shall normally receive the first step in the salary range for the new position. However, if such step is equal to or less than his/her present salary, or he/she would be eligible for step advancement within sixty (60) days in his/her previous position, he/she shall receive the next step in the salary range of the new position which is immediately above his/her present salary.

3. Change in Pay upon Demotion

When an employee is demoted, he/she shall be placed in a salary step in his/her new class, which is the same as or above the step held prior to demotion, providing said demotion is not the result of disciplinary action.

4. Change in Pay upon Reclassification

When a position is reallocated to a classification with a higher pay range and the incumbent employee retains the position, he/she shall normally be placed at the first step in the new range. If no increase in pay results, advancement may be made to the new step immediately above the present salary. When a position is reallocated to a classification for non-disciplinary reasons with a lower salary range, the incumbent employee shall not be reduced in pay while he/she continues to occupy the position. If his/her current rate exceeds the maximum step of the new range, his/her salary shall be frozen ("blue penciled") at its current level. When the incumbent leaves the position, his/her replacement shall normally be hired at the beginning rate.

5. Canine Services

- a. The City hereby agrees to pay a flat, fixed monthly sum of One Hundred Dollars (\$100.00) for all aspects of care and training for canines that work one hundred twenty (120) hours per month. Such compensation will be taxable unless the officer submits documentation of an evidentiary nature showing expenses incurred on behalf of the care for the canine. Sick and vacation time shall not count against the one hundred twenty (120) hour minimum limit of workable time by the canine.
- b. This monthly sum does not cover the cost of a catastrophic event such as the death or serious injury of the canine while working. Given such an event, the City will consider additional, full or partial reimbursement to the appropriate police officer based upon the circumstances of the causable event.
- c. The current "Agreement for Canine Services" between the City of Auburn and Stan Hamelin shall become an Addendum to this MOU. Any new

agreement with an officer for Canine Services is to be discussed with the APOA prior to execution. In lieu of an "Agreement for Canine Services," Items 5 a. and b. above shall be in effect until a new agreement is executed.)

C. ANNIVERSARY DATES

1. The City agrees to modify its anniversary date rules to require that any and all merit step increases or other anniversary date references will be applied in the pay period in which the anniversary date falls.
2. Eligibility for Advancement in Pay

	<u>Time-In-Step</u>
A	6 months
B	6 months
C	1 year
D	1 year
E	-----

If warranted for the good of the service or when any employee demonstrates outstanding capacity in performing his/her duties, he/she may be advanced prior to completion of the above time-in-step requirement. When a pay range consists of less than six (6) steps, the range shall be established at the higher steps within the above time schedule. In determining time-in-step, it shall begin on the first day of the payroll period if employment occurs during the first ten (10) days of the period, otherwise time shall begin on the first day of the next payroll period. If an employee is on leave without pay for more than one (1) month, the period shall be deducted from his/her accumulated time-in-step.

D. MERIT STEP INCREASES

1. Employees may be advanced to higher steps as merited by progressive improvement in job skills and work performance, as affirmed by periodic performance appraisal documents. The following time-in-step requirements shall apply before an employee gains eligibility for an advancement in pay.
2. The City Manager shall have the authority to withhold step advancements only for reasonable cause, and the department head has the authority and responsibility to recommend withholding step advancements by the City Manager if they are not merited. The department head shall keep his/her employees informed about their job performance, giving good work its proper recognition and any deficient work all possible guidance and assistance toward improvement. The department head shall notify the employee as to the reasons for withholding step advancements. Such matters may be subject to the grievance procedure and limited to whether the City was arbitrary, capricious or discriminatory.

3. For Police Department sworn personnel there shall be a one (1) year probationary period.

E. PAY FOR EMPLOYEES IN AN "ACTING" CAPACITY

Any employee in the unit who is assigned to and performs the duties of a higher level position on an "acting" basis for a full shift or more, for any reason, shall be compensated at a rate of pay five percent (5%) greater than the salary authorized before the "acting" duty assignment is made.

F. SPECIAL ASSIGNMENT POSITIONS

1. Special assignment positions within a classification may be established where duties and responsibilities are of a specialized nature by comparison to other positions in the class. Said positions may be established by the City Council following a report and recommendation thereon by the City Manager. Special assignment positions so established will be reviewed annually by the City Council. Selection of employees to said position and removal there from shall be made by the City Manager upon recommendation of the department head. An employee so assigned shall receive a salary increase of not less than five percent (5%) of his/her present salary.
2. Officers expressly assigned to provide field training shall be granted an assignment increment of five percent (5%) over base salary for all hours actually worked.
3. Officers assigned to detective duty will receive special pay of five percent (5%) in accordance with the salary resolution in force as of June 1, 1994. Designated officers are to be reviewed annually.
4. Officers temporarily assigned expressly by the Operations Commander or designee to provide duties as Officer in Charge, shall be granted an assignment increment of five percent (5%) over base salary for all hours actually worked.
5. Officers assigned to Motorcycle and/or Bicycle Patrol shall have the option of requesting to perform their shift by using a patrol car when the outside temperatures are unsafe and/or unhealthy. General guidelines for outside temperatures would be above 95 degrees and/or below 40 degrees.
6. Officers assigned as a School Resource Officer (SRO) shall be granted an assignment increment of five percent (5%) over base salary for all hours actually worked.

G. DEFERRED COMPENSATION

Employees in the unit shall be allowed to voluntarily participate in the City-sponsored deferred compensation plan.

H. LONGEVITY

1. Longevity increments shall be administered for all unit members at the start of seven (7), eleven (11), fifteen (15) and the completion of twenty (20) years of satisfactory active service. Longevity increment shall be five percent (5%) over the employee's base salary and shall be administered based upon the employee's regular employment date.
2. Employee must have a performance evaluation of "meets expectations" or better in the twenty-four (24) month period preceding the applicable longevity step in order to be eligible for the five percent (5%) increase.

I. CLASSIFICATION ADVANCEMENT

Provided that the position is budgeted, employees of the unit hired in the entry level of the class series shall be promoted to the journey level of the class series upon completion of one (1) year of service, provided that the performance rating of the employee is at an overall "satisfactory" or higher rating. An employee with less than a satisfactory overall rating at the lower level shall be reevaluated no later than three (3) months after the original denial of their promotion so that he/she may be promoted to the next higher level of the class series. Denial of a promotion to the next higher level after the second review may only be for reasonable cause.

J. NIGHT SHIFT DIFFERENTIAL

Employees shall receive five percent (5%) above their base pay when they are assigned to the night shift.

To qualify for shift differential, an employee must have a regularly assigned daily work schedule that requires the majority of actual working time (more than half the number of hours in the workday) 7:00 p.m. through 7:00 am hours inclusive.

K. SHIFT WORK SCHEDULE SELECTION

The Police Department shall post the work shift schedule for police officers twice a year. Within the four patrol shifts, there will be one position per shift that will be filled by seniority (See Illustration below). Employees with the most seniority shall be permitted to select one of the positions for the shift they wish to work. The remaining positions within the shifts will be filled taking bids into consideration; however, seniority shall not take precedent. These positions will be filled based on needs of the department and the Police

Chief shall retain the sole authority to make a final decision on shift selection for all employees that do not fall within the four positions covered by seniority.

If one of the seniority positions is not filled, that position will then be filled taking bids into consideration, but the position will be filled based on needs of the department and the Police Chief shall retain the sole authority to make a final decision.

The Chief of Police will also have the ability to deny a position based on seniority if that person requires retraining or monitoring for a job performance that is substandard or unsatisfactory based on their current yearly evaluation.

<u>Team A</u> Position 1- Filled by Seniority Position 2- Filled by needs of Department Position 3- Filled by needs of Department	<u>Team B</u> Position 1- Filled by Seniority Position 2- Filled by needs of Department Position 3- Filled by needs of Department
<u>Cover Shift</u> Position 1- Filled by needs of Department	<u>Cover Shift</u> Position 1- Filled by needs of Department
<u>Team C</u> Position 1- Filled by Seniority Position 2- Filled by needs of Department Position 3- Filled by needs of Department	<u>Team D</u> Position 1- Filled by Seniority Position 2- Filled by needs of Department Position 3- Filled by needs of Department

SECTION 6.0 **SPECIAL ALLOWANCES**

A. UNIFORM ALLOWANCE

Effective April 2015, the City shall on a quarterly basis provide each sworn officer the amount of Two Hundred Fifty Dollars (\$250.000) for clothing allowance. Clothing so purchased will meet the official standards of the department. The first uniform shall be purchased by the City in order to lessen the fiscal impact on new hires who would otherwise have to wait for a quarterly payment of a uniform allowance.

In lieu of the \$600 reimbursement for protective vests, the City will provide NIJ Level 3A protective vests for all Police Officers and shall replace protective vests on manufacturer recommended intervals.

B. MEAL ALLOWANCE

In the event that an employee is required to work a minimum of two (2) hours beyond employees regular shift, including emergency call out, employees shall be paid a meal expense of twelve dollars (\$12.00) for breakfast, sixteen dollars (\$16) for lunch, and twenty-nine dollars (\$29) for dinner.

C. MILEAGE ALLOWANCE

1. The City hereby agrees with the Association to compensate the driver of a vehicle for travel time to and from a training location at appropriate FLSA rates. Mileage reimbursements will be at applicable GSA rates for POST-related training. Other training will be reimbursed at applicable IRS rates for miles driven.
2. When the City requires a Police Department employee to attend a training session outside of the City, it shall be the employee's option to use either a City-owned vehicle or his/her own vehicle for transportation. Any vehicle mileage reimbursement will be paid at the GSA rate or applicable IRS rate. Employees authorized to use a privately-owned vehicle shall be required to maintain Public Liability and Property Damage (PL & PD) insurance coverage on their vehicle and to maintain their operator's license in good standing.

SECTION 7.0
LEAVES OF ABSENCE

A. VACATION

1. Effective the first pay period after approval of the April 1, 2015 MOU by the City Council, existing employee vacation leave balances shall be transferred to Vacation Leave Bank B. Employees may continue to use and cash out all vacation leave in Vacation Leave Bank B pursuant to Section 7A, items 2 through 10 below, except that:
 - a. No additional vacation leave shall be accrued to Vacation Bank B.
 - b. Employees may cash out 100 hours of vacation leave from Vacation Leave Bank B through June 30, 2015.
 - i. For purposes of cash out, including upon separation, the value of accrued vacation leave in Vacation Leave Bank B shall be based on the salary step earned by employees as of the effective date of the April 1, 2015 MOU. Vacation Leave Bank B shall be cashed out at the employee's regular rate of pay using the salary step earned by employees as of the effective date of this Section.

2. Where employees are assigned twelve (12) hour duty shifts, the calculation of earned vacation credits shall be increased by five percent (5%) over the annual accrual rate.
3. Employees shall earn vacation credits at the rate of:
 - a. From one (1) to two (2) years of service, all eligible employees shall earn vacation at the rate of twelve (12) working days (96 hours) vacation per year.
 - b. From three (3) to five (5) years of service, all eligible employees shall earn vacation at the rate of fifteen (15) working days (120 hours) vacation per year.
 - c. After five (5) years of full service, all eligible employees shall earn vacation credits at the rate of seventeen (17) working days (136 hours) vacation per year.
 - d. After ten (10) years of service, all eligible employees shall earn vacation credits at the rate of twenty-one (21) working days (168) vacation per year.
 - e. After fifteen (15) years of full service all eligible employees shall earn vacation credits at the rate of twenty-three (23) working days (184 hours) vacation per year.
4. Vacation leave is a right of the employee; however, the use of same shall be approved by the Police Chief or his/her designee, taking into account the desires and seniority of employees and, more particularly, the workload requirements of the department.
5. Probationary employees, while serving their first six (6) months in the service of the City, shall not be allowed to use their accrued vacation time. However, vacation credits shall accrue to such probationary employee.
6. As of his/her anniversary date each year, no employee shall be allowed to maintain balance of unused vacation leave earned in excess of twice his/her yearly allowance for the forthcoming year (otherwise known as the "vacation cap"). Employees whose vacation balances exceed the vacation cap shall not accrue vacation until such balances are reduced below the vacation cap. Exceptions to the vacation cap may be made by the City Manager when such exceptions are deemed by the City Manager to be in the best interest of the City. Any vacation leave accrued and not used shall be in addition to any vacation leave in Vacation Leave Bank B (Section 7A.1). This Section (Section 7A.6) shall not be applicable to vacation leave in Vacation Leave Bank B.

The City shall have the sole discretion to pay any portion of such vacation balance for any employee with more than twice his/her yearly vacation allowance during any fiscal year.

7. Effective July 1, 2015, employees may cash out up to 40 hours of vacation leave per fiscal year. Vacation leave shall be cashed out pursuant to procedures established by the City.
8. Upon termination, all accumulated vacation will be added to the final pay and/or toward early retirement, at the employee's option.
9. The City shall pay to the estate of an employee who dies prior to discharge for cause, retirement or layoff, any accrued accumulated vacation. Payoff shall be based upon the hourly pay rate of such employee at the time of death.
10. Part-time employees who work twenty (20) hours a week on a regular basis shall be eligible to accrue and use vacation leave according to the same rules that apply to all full-time employees; however, the accrual rate of a part-time employee shall be prorated based upon the number of hours employed, i.e., half-time, sixty percent (60%) time, etc. Part-time employees subsequently hired as permanent full-time employees shall receive prorated credit for part-time service toward vacation accrual as a full-time employee.
11. The Police Department shall post the vacation calendar for police officers twice a year, once in October for vacation in January thru June and again in April for vacation in July thru December. Within the four patrol shifts we will take requests; however, staffing will be based on the needs of the department.

B. SICK LEAVE

1. Sick leave shall be allowed in case of actual sickness of the employee. Employees may use up to five (5) days sick leave per calendar year in the event of illness on the part of a family member that requires their assistance. Such leave shall not be charged against regular sick leave accrual. This section would apply to the following family members: mother, father, sister, brother, spouse, child, grandparent, grandchild, mother-in-law, and father-in-law of the employee or family member domiciled with the employee.
2. Sick leave shall be earned at the rate of twelve (12 x 8 hour) workdays per year. Sick leave shall be taken in periods of no less than one (1) hour. No sick leave shall be earned during leaves of absence without pay.
3. Upon separation, an employee will receive cash compensation for accumulated sick leave in excess of forty (40 x 8 hours) work days. Compensation for such sick leave

shall be based upon the hourly pay-rate of such employee at the time of separation. Upon retirement, in lieu of cash payoff and at the option of the employee, accumulated sick leave may be applied toward early retirement on a day-for-day basis. However, any employee who retires after July 1, 1989, shall not accrue "new" time or be eligible for "new" pay increases granted after his/her retirement date so long as they are using previously accrued sick leave for early retirement purposes.

4. Employees shall have the option to sell back to the City up to nine (9) days annually of accumulated sick leave, provided that the employee has an accumulated balance of not less than seventy (70) days.
5. Part-time employees who work twenty (20) hours a week on a regular basis shall be eligible to accrue and use sick leave according to the same rules that apply to all full-time employees; however, the accrual rate of a part-time employee shall be prorated based upon the number of hours employed, i.e., half-time, sixty percent (60%) time, etc. Part-time employees subsequently hired as permanent full-time employees shall receive prorated credit for part-time service toward sick leave accrual as a full-time employee.
6. Probationary employees, while serving their first three (3) months in the service of the City, shall not be allowed to use their accrued sick leave. However, they shall continue to accrue sick leave credits at the regular rate for entitlement thereafter.
7. When absence is for more than one (1) workday, the employee may be required to file a physician's certificate or a personal affidavit with the Personnel Officer stating the cause of the absence before sick leave with pay will be granted. If an employee becomes ill while on vacation, employees period of illness may be charged to sick leave upon presentation of a doctor's certificate stating the nature and extent of the illness. In any case, an employee may be required to file a physician's statement for each illness regardless of duration. An employee may also be required to take an examination by a physician designated by the City and to authorize consultation with his/her own physician concerning his/her illness.
8. Employees shall, whenever possible, make appointments for medical, dental and similar purposes on Saturday or other non-workdays. If this is not possible, sick leave may be used for these purposes in accordance with the rules stated above.
9. The City will establish a maximum cap of seventy-five (75) days of accumulated sick leave that may be used for early retirement when the purchase of the PERS sick leave/service credit benefit occurs. Upon the City purchase of the PERS sick leave/service credit benefit plan, the City "sick leave sell-back" plan (contained in paragraph 3 of the sick leave provisions of the current MOU) shall expire, and sick days accrued beyond the seventy-five (75) day cap will not be paid for by the City.

C. TIER II SICK LEAVE

A two-tiered benefit program, which was adopted April 24, 1995, (City Council Resolution No. 95-46), will remain in effect. This program provides that members on April 24, 1995, will continue to receive those benefits set forth in prior Memoranda of Understanding. Members hired after April 24, 1995, shall receive a second tier of benefits as follows:

1. Sick leave balances may not be surrendered to the City for cash value.
2. Family leave time and funeral leave time is designated as sick leave and will be deducted from sick leave balances.
3. Upon retirement, such unused sick leave balances remaining may be applied as PERS service credit, but cannot be cashed out.
4. Sections 1, 2, 5, 6, 7, and 8 above (Section 7B) shall apply to employees in Tier II.

D. FUNERAL LEAVE

Pursuant to Section 7.B, item C 2, employees in the unit shall be granted funeral leave with pay as necessary, but not to exceed five (5) workdays, upon the occasion of the death of a close relative. Additional funeral leave for travel purposes, not to exceed three (3) calendar days, may be granted by the City Manager when circumstances warrant the same. This section would apply to the following family members: mother, father, sister, brother, spouse, child, grandparent, grandchild, mother-in-law or father-in-law of the employee.

E. JURY LEAVE

An employee summoned to jury duty shall inform employees supervisor and, if required to serve, may be absent from duty with full pay while actively rendering such service. Any jury fees received by an employee shall be remitted to the City, exclusive of any meal and/or travel reimbursements rendered by the courts.

F. HOLIDAYS

1. Employees Assigned to Work Shifts:

Employees who work shift assignments shall receive a Holiday in Lieu pay differential of 5%.

2. Employees Not Assigned to Work Shifts:

The following days shall be holidays for employees in the unit not working "shift" assignments.*

- a. New Year's Day
 - b. Martin Luther King, Jr., Day
 - c. Lincoln's Birthday
 - d. Washington's Birthday
 - e. Memorial Day
 - f. Independence Day
 - g. Labor Day
 - h. Veteran's Day
 - i. Thanksgiving Day
 - j. Friday immediately following Thanksgiving Day
 - k. Christmas Eve
 - l. Christmas Day
 - m. New Year's Eve
 - n. New Year's Day
3. If a holiday falls on Saturday, then the previous Friday is to be taken. If a holiday falls on Sunday, then the following Monday is to be taken.
 4. Non-shift employees assigned to work on a holiday shall be paid at a rate of two and one-half (2-1/2) times for hours worked. Such compensation is limited only to employees actually working a holiday shift. If a holiday falls on an employee's regular day off, he/she shall be entitled to equivalent time off at a later date.
 5. The City and the Association have agreed that "non-shift" personnel may work their holidays with prior City approval and receive appropriate pay or time off at a later date in the same manner as shift personnel would if the workload dictates that this occur.
 6. Shift personnel working either Thanksgiving or Christmas shall be paid at a rate of one and one-half (1-1/2) times for hours worked.

*Exception for Detectives: Detectives to receive four (4) hours of floating holiday to be used during each calendar year. Floating holiday hours may not be carried over (as of the employee's anniversary date).

G. MILITARY LEAVE

1. Military leave shall be granted in accordance with the provisions of state law (Military and Veterans Code). All employees entitled to military leave shall give their department head and the City Manager a notice and opportunity, within the limits of military requirements, to determine when such leave shall be taken. If available, a copy of military orders received shall be delivered to the City prior to the taking of such leave. If not available, then upon return from military duty, a copy of military release shall be given to the City.
2. Full pay shall continue while the employee is on military duty; however, upon return to employment in the City, any military pay received for such duty in excess of thirty (30) days service is to be reimbursed to the City.
3. Any employee engaged in monthly training for military reserve duty shall not suffer any loss of compensation or benefits for weekend training. Neither shall there be any loss of compensation or benefits for the annual thirty (30) day training, provided, however, that upon conclusion of the thirty (30) day annual training, the employee reimburses the City for the amount of salary paid by the military for the same period.

H. LEAVE OF ABSENCE

The City Manager, upon written request of an employee, may grant a leave of absence without pay for an initial period up to ninety (90) days. Additional leave, not to exceed one (1) year maximum, may subsequently be granted for good and sufficient reason. Leaves hereby authorized shall include educational leaves, maternity leaves, employee illness and injury and leave for any other purpose promoting the good of the service. Whenever granted, such leaves shall be in writing and signed by the City Manager. Upon expiration of such a leave, the employee shall be reinstated to the position held at the time leave was granted. Failure of the employee to report promptly at its expiration or within a reasonable time after notice to return to duty shall terminate his/her right to be reinstated. Any leave without notice or without authorization shall be absence without leave and shall be the basis for summary dismissal.

SECTION 8.0
HEALTH AND WELFARE

A. HEALTH, DENTAL, VISION & LIFE INSURANCE COVERAGE

CalPERS PEMHCA

1. The City shall make all contributions legally mandated under PEMHCA.
2. The City shall establish a Cafeteria Plan ("Plan") for health premiums and other optional benefit contributions.

City Contributions to the Plan

2. Beginning January 1, 2018, the City agrees to pay into the plan a dollar amount equal to 80% of the average total cost for premiums occurring in CalPERS plans offered to City employees in the 95603 Zip Code area (excluding the highest and lowest cost plans) for represented employees and their enrolled dependents.

Subscriber Only – 80% of the premium

Subscriber Plus One - 80% of the premium

Subscriber plus Two or more - 80% of the premium

Employee Contributions to the Plan

- The employee shall pay the difference, between the employer contribution amount and the actual premium of the health plan selected by the employee.
- All employee contributions to the Plan shall be made by payroll deduction.

In Lieu Payment

Employees electing not to receive City health coverage, but who elect coverage provided by an employee's spouse or significant other, shall be paid the amount as set forth in the "Single employee coverage" as an "in lieu" payment.

PEMHCA Compliance for Employees Enrolled in a CalPERS PEMHCA Health Plan

The City's contribution to the plan described above includes the minimum employer contribution amounts mandated under PEMHCA.

The City may explore alternative sources for Health Insurance during the term of this MOU and make changes to that source after meeting and conferring with the Union.

Dental and Vision

City self-insured Dental and Vision benefits shall remain unchanged for the term of this MOU.

Optional Insurance Plan(s)

The City shall offer at least two (2) optional insurance plans for employee participation. Optional insurance may include life, disability or other specialized insurance products. These optional elements shall be offered to employees within the cafeteria plan on a pre-tax basis.

B. LIFE INSURANCE

The City shall provide life insurance for all employees in the unit in the amount of \$50,000 for each employee. Each employee shall be allowed to purchase additional amounts of life insurance above the \$50,000 provided by the City. These additional amounts will be paid for by the employee and may be paid for through payroll deductions.

C. EMPLOYEE HEALTH INSURANCE COVERAGE AFTER RETIREMENT

An employee who retires from City service may continue, at their option, to participate in the City-sponsored CalPERS health insurance program, pursuant to the Public Employees Medical and Health Care Act (PEMHCA). The City's contribution shall be limited to the Minimum Employer Contribution pursuant to PEMHCA. The retiree shall be responsible for the balance of the premium amount for himself/herself and all eligible enrolled dependents. An eligible employee may use funds from the Medical Savings Program outlined below provided the employee meets the conditions associated with such plan. This entitlement shall cease when the employee reaches age 65 and becomes eligible for Medicare.

D. LONG TERM DISABILITY INSURANCE

1. The City shall pay 100% of a Long Term Disability Insurance premium.

E. RETIREMENT

1. Retirement Formula:

- a. Employees hired prior to July 1, 2010;

Employees hired prior to July 1, 2010 shall be members of the Public Employees Retirement System (PERS), and shall have the PERS 3% @ 50 formula as provided by the terms of the contract in effect between the City and PERS.

- b. Employees hired between July 1, 2010 and January 1, 2013:
Employees hired between July 1, 2010 and January 1, 2013 shall be members of the PERS Two-Percent (2%) @ 50 formula, as provided by the terms of the contract in effect between the City and PERS.

2. Retirement Contribution:

- a. All employees hired prior to January 1, 2013 (classic members):
Effective July 1, 2013, or as soon as administratively feasible, all employees hired prior to January 1, 2013 shall pay the full nine percent (9%) of the employee share of PERS. Effective the first pay period in January 2017, all classic members shall pay the employee portion of nine (9) percent plus an additional three (3) percent of the employer cost for a total employee contribution of twelve percent (12%) of salary to the PERS retirement plan. If necessary, the contract with PERS shall be amended to reflect the twelve percent (12%) employee contribution rate for classic members.

All such payments by the employee shall be done in accordance with IRS code 414 (h)(2) and shall be paid on a pre-tax basis. Additionally, any payments made by the employee shall be credited to the employee's PERS account in accordance with PERS rules.

- b. New employees hired on or after January 1, 2013 (new members):
New employees shall be members in PERS in compliance with the Public Employees' Pension Reform Act (PEPRA). New members shall contribute fifty percent (50%) of the total normal cost of the PERS retirement plan. Effective the first pay period in January 2017, all new members shall pay an additional three (3) percent towards the employer cost. All such payments by the employee shall be done in accordance with IRS code 414 (h)(2) and shall be paid on a pre-tax basis. Additionally, any payments made by the employee shall be credited to the employee's PERS account in accordance with PERS rules.

- 3. CalPERS Section 21574 – Fourth Level of Survivor Death Benefit:
The City shall amend the CalPERS agreement with the City to provide the CalPERS Section 21574 – Fourth Level of Survivor Death Benefit as soon as practical. Employees shall be responsible for any employee-borne costs for the benefit, and the City shall pay the employer share for the benefit.

4. Medical Savings Plan:

- a. The City shall establish as soon as practical a Medical Savings Plan for each employee to be used for payment of medical premiums upon retirement as outlined below.
- b. The City shall contribute a total of two-Hundred and forty Dollars (\$240.00) per month towards an employee's Medical Savings Plan provided the employee has ten (10) years City service with the City of Auburn. The City shall contribute a total of One-Hundred and ninety-dollars (\$190.00) per month towards an employee's Medical Savings Plan provided the employee has less than ten (10) years City service with the City of Auburn. Such employees' shall be subject to the following conditions:
 - 1) The City's contribution to such accounts shall be invested into a Section 115 irrevocable trust account which includes the following features:
 - a. City contributions to the trust are not subject to taxation.
 - b. Interest income to the trust is not subject to taxation.
 - c. Distributions are not subject to taxation, subject to section 115 of the IRS code.
 - d. City contributions are irrevocable in nature.
 - e. Contributions and distributions shall be governed pursuant to the MOU between the City of Auburn and the APOA and section 115 of the IRS code.
 - g. Any and all fees for set-up, maintenance and reimbursement distribution shall be borne by the Section 115 irrevocable trust.
 - 2) Such funds shall become available only to an employee who has accumulated such funds while employed as a Police Officer with the City of Auburn, and retires from the City of Auburn.
 - 3) In the event such employee separates from the City of Auburn for any reason other than retirement (including medical retirement), such funds shall be totaled and redistributed to the remaining employee accounts pursuant to the following formula:

Total years of service with the City of Auburn as of January 1,
divided by the total years of service of all officers in the Auburn
Police Officers Association = ____ % to be multiplied by the sum
of the available funds.
 - 4) Such funds shall only be used to pay for employees' health insurance premium for employee and one (1) dependent.

- 5) This plan is in an effort to explore alternatives to the high cost of health insurance for retirees, and as an incentive to retain experienced Police Officers. All money contributions and interest shall vest with those employees with a medical savings account, and be subject to the conditions outlined above.
- 6) The Section 115 plan provider shall provide each employee with an annual report of the total dollars paid for the employee and credited to the employee's individual account for the Medical Savings Plan.

F. DRUG, ALCOHOL AND SUBSTANCE ABUSE POLICY

1. The City reserves the right, for reasonable suspicion, to require an employee to submit to drug, alcohol or substance abuse testing.
2. "Reasonable suspicion" for purposes of this Article includes, but is not limited to, the following:
 - a. A critical incident has occurred while on duty for the City or at the employee's work location.
 - 1) An accident involving a City vehicle or equipment causing damage to property or persons, in combination with any factors in paragraph "b" below.
 - 2) Employee manifests mental or physical impairment sufficient to raise doubt that normal tasks can be safely or effectively performed.
 - 3) Employee is observed with illegal drug or drug paraphernalia in possession for possible sale or use; employee is observed with open container of alcohol in work area or vehicle.
 - b. Documented objective facts and a reasonable inference drawn from those facts that an employee is under the influence of drugs, alcohol or substance. Such objective facts may include characteristics of the employee's appearance, behavior, mannerisms, speech or body odors. Components of such documentation should include (a) equilibrium, (b) manner of speech, (c) mental reactions, (d) odor of intoxicants on breath or clothing, (e) eyes, (f) general appearance, (g) physical actions and (h) work behaviors.

G. EMPLOYEE ASSISTANCE PROGRAM

The City shall select and establish an Employee Assistance Program (EAP) and contribute approximately Five Dollars and Seventy-Five Cents (\$5.75) per month per employee

toward the cost for such City-determined program. Such program shall endeavor to provide counseling services for personal and family member problems related to marital/family relationship problems, alcohol or drug abuse, stress-related problems, depression and other types of psychological problems for employees of such referral and intervention.

H. CHIROPRACTIC SELF FUNDED PROGRAM

The City agrees to establish a self-funded Chiropractic Program as soon as practical with the following benefits and premiums: twenty (20) visits annually per employee and each employee's dependents; Plan to pay Ten Dollars (\$10.00) per visit; seventy-five percent (75%) of premium to be paid by City; twenty-five percent (25%) of premium to be paid by employee. The specific monthly premium for employee and City shall be:

	<u>Employee</u>	<u>City</u>
Employee only coverage:	\$2.08/pay period	\$6.24/pay period
Employee plus one:	\$4.16/pay period	\$12.48/pay period
Employee plus two or more:	\$5.82/pay period	\$17.46/pay period

SECTION 9.0 **REDUCTION IN FORCE**

A. LAYOFF AUTHORITY

1. The City Manager may lay off employees pursuant to the following procedures. The City shall give the Association notice prior to implementation of any proposed layoff and shall provide the Association with the opportunity to meet and confer regarding alternatives to the layoff. This constitutes the full agreement concerning layoffs between the parties.
2. The appointing authority may layoff or reduce an employee when necessary:
 - a. For reasons of economy, lack of work or funds;
 - c. For a change in organization where there are more employees than positions in any class within the City.

B. EMPLOYMENT STATUS AND LAYOFF

Layoffs and reductions shall be made by class of position. In each class of position in which there is to be a layoff or reduction, employees shall be laid-off according to employment status in the following order:

First:	Temporary
Second	Probationary
Third:	Permanent

Temporary employees shall be laid-off according to the needs of the service as determined by the appointing authority. Probationary employees in the class shall be laid-off or reduced according to seniority in service.

C. ORDER OF LAYOFF

In case there are two (2) or more regular employees in the class from which layoff or reduction is to be made, such employees shall be laid-off or reduced on the basis of the last rating in the class as follows:

1. Employees within each category shall be laid-off in inverse order of seniority in City service, except where it can be established that an employee possesses special skills essential to the City.
2. An employee whose position must be eliminated or vacated for the reasons cited in this Section and who requests a voluntary reduction rather than cause some less senior employee to be laid-off or reduced, is entitled to have his/her name placed on a re-employment list.
3. In the event of a tie in seniority, the following regular performance ratings on file will determine the order:

First:	All employees having ratings of "Unsatisfactory"
Second:	All employees having ratings of "Improvement Needed"
Third:	All employees having ratings of "Satisfactory"
Fourth:	All employees having ratings of "Outstanding"

D. RE-EMPLOYMENT LIST

1. The names of person's laid-off or reduced in accordance with these rules shall be entered upon a re-employment list in the inverse of order specified for layoff. Such list shall be used by the appointing authority when a vacancy arises in the same or lower class of position before certification is made from an eligible list. When a vacancy occurs, the appointing authority shall appoint the person highest on the re-employment list who is available. Two (2) refusals shall cause the incumbent's name to be stricken from the list.
2. Names of person's laid-off or reduced in lieu of layoff shall be carried on a re-employment list for a one (1) year period, except that the names of persons appointed to regular positions of the same level as that from which laid-off shall, upon such appointment, be dropped from the list. Persons reduced or re-employed

in a lower class or re-employed on a temporary basis shall be continued on the list for the higher position for an additional one (1) year period. A person appointed from a layoff list shall continue to have the same anniversary date he/she had prior to termination, but shall have no seniority accrued except for active service.

E. EXCEPTION TO ORDER OF LAYOFF

Where the appointing authority deems it to be for the best interest of the service, employees may retain an employee who has specific qualifications, despite the order of the layoff provided above if the appointing authority determines:

1. Such action is for the best interest of the service.
2. The employee retained has such special qualifications.
3. The employee laid-off does not have such special qualifications.
4. Such special qualifications are important in the performance of the work of the City.

F. REDUCTION

The appointing authority may, at employees discretion, if employees deems it for the best interest of the service, make reductions in lieu of layoff to positions at lower levels in the same or related series or positions in other series for which the employee to be reduced has demonstrated that employees possesses the skills and aptitudes required in the position to which he/she is to be reduced, thereby causing layoffs only in the lower ranks. An employee reduced pursuant to this Section shall not be subject to further reduction from the class until all employees in that class, who have not been subject to reduction, have vacated that class.

SECTION 10.0
DISCIPLINARY GRIEVANCES

A. CATEGORIES OF DISCIPLINE

There will be two (2) categories of discipline: fiscal impacts and non-fiscal impacts. Where disciplinary action is taken that has no fiscal impact, the action taken is not subject to arbitration. Records of such non-fiscal discipline shall be purged from the personnel file after a period of sixty (60) months from the date of issuance.

B. DISCIPLINARY APPEALS PROCEDURE

The parties agree to amend the existing disciplinary appeals procedure, vacating and abolishing the Personnel Board (Section 4.00 and 4.05) and replacing Section 13.09 of the City's Personnel Rules and Regulations in its entirety as follows:

1. The grievant and the Association may request the City Manager, or his/her duly authorized representative, to appoint a Hearing Officer to hear evidence and make recommendations to the governing body of the City regarding the resolution of such grievances. The grievant and the Association must request the appointment of the Hearing Officer within ten (10) business days from the date the grievant has received the decision of the City Manager or his/her designee pursuant to the "Skelly" conference. In the event of termination, the employee shall be removed from City payroll, however, the employee shall retain the right to exhaust the disciplinary appeals procedure. Failure of the grievant and the Association to request the appointment of a Hearing Officer within the time limits set forth above constitutes a waiver and bars the grievance and the grievance will be considered settled on the basis of the last management response.
2. Within ten (10) business days after receipt of a request for the appointment of the Hearing Officer, the City Manager or the Director of Finance/Personnel shall attempt to reach voluntary agreement with the grievant and the Association as to the appointment of a Hearing Officer. Failing to reach voluntary agreement within ten (10) business days of receipt of the request for the appointment of a Hearing Officer, the City Manager or employees duly authorized representative shall obtain a list from the American Arbitration Association, State Mediation Conciliation Service of five (5) persons who are qualified to serve as Hearing Officer. Upon receipt of the list, the parties shall meet to select a Hearing Officer from the list. The list of five (5) shall serve as the list of persons to be used by the City and the Association for the term of the agreement, unless otherwise agreed to by both parties.
3. The hearing shall be conducted in accordance with the Voluntary Labor Arbitration Rules of the American Arbitration Association in cases involving disciplinary action, and the Hearing Officer shall use the standard of proper cause in determining the propriety of the City's conduct. The Hearing Officer shall not hear witnesses or take evidence out of the presence of the other party except by default. The Hearing Officer shall be bound by the expressed terms and conditions of the Memorandum of Understanding, as well as the Personnel Rules and Regulations of the City, in determining the validity of the City's action and shall not have the authority to recommend any additions or subtractions from the Memorandum of Understanding or any provisions of the Personnel Rules and Regulations.
4. In the conduct of the hearing, the Hearing Officer, once chosen, shall hold the hearing to make findings of fact and recommendations to the parties within thirty (30) calendar days of the Hearing Officer's appointment. The Hearing Officer shall be bound to render employees findings and recommendations within thirty (30) calendar days of the close of the hearing.

5. The Hearing Officer shall submit his/her findings and recommendations in writing to the City, the grievant and the Association. The Hearing Officer's recommendations made thereafter shall be final and binding upon the grievant, the Association and the City, if accepted by the Council. The City Council shall accept the findings and recommendations of the Hearing Officer in its entirety, unless it finds that the Hearing Officer has (a) exceeded employees authority, (b) committed a serious procedural error, (c) made a finding or conclusion unsupported by the record. (In no case, however, shall a remedy require special legislative action.) Such action shall be taken at the next regular Council meeting, unless said meeting is set within less than seven (7) calendar days of receipt of the Hearing Officer decision.

The cost of obtaining a panel of Hearing Officers from the American Arbitration Association and all costs of the hearing, including the cost of the Hearing Officer, shall be equally borne by the City, the grieving party, and the Association. Each party shall bear the cost of its own attorney's fees.

C. APPEAL REVIEW BY THE CITY COUNCIL

Either the City Manager or the employee may request the City Council to review the Hearing Officer's decision as limited by the conditions above. Such request shall be submitted in writing to the City Clerk within ten (10) calendar days after receipt of a copy of the Hearing Officer's decision. Review by the City Council shall be made within fifteen (15) calendar days after the request for review is received. The City Council may approve, modify or reverse the decision of the Hearing Officer and its decision shall be final.

SECTION 11.0 **MISCELLANEOUS**

A. PERSONNEL RULES

The City will make available to its employees a reasonably current copy of the City Personnel Rules and Regulations. In the event that there is a conflict between the City's Personnel Rules and this Agreement, the terms of this Agreement shall prevail. Those provisions of the City's Personnel Rules which directly pertain to regular unit members not specifically referred to in this Agreement are, by this reference, incorporated herein.

B. PROBATIONARY PERIODS

Subject to POST requirements, the regular probationary period of all sworn employees in the unit shall normally be no longer than twelve (12) months of continuous service for

initial employment. Extension of probationary periods up to a maximum of six (6) months may be approved by the City Manager in individual cases where there is reasonable cause to do so. The normal probationary period for advancement shall be no longer than six (6) months, subject also to extension.

C. NO STRIKES, NO LOCKOUTS

It is agreed by the parties that there shall be no strikes or lockouts during the term of this Agreement. Any employee authorizing, engaging in, encouraging, sanctioning, recognizing or assisting any strike, slowdown, picketing, work stoppage or other concerted interference in violation of this Article, or refusing to perform duly assigned services in violation of this Article shall be subject to disciplinary action.

D. PRE-EXISTING BENEFITS, POLICIES, RESOLUTIONS AND OTHER POLICIES

The City shall continue to provide and comply with previously existing negotiable benefits, policies and Personnel Rules and ordinance provisions pertaining to employer-employee relations in existence on the effective date of this Agreement.

E. WAIVER CLAUSE

This Memorandum of Understanding and its attachments and referents constitute the full agreement between the parties concerning wages, hours, and conditions of employment. This Agreement may be altered, changed, added to, deleted from or modified only through mutual consent of the parties. Any additions or other changes in this Agreement shall not be effective unless reduced to writing and properly signed by both parties.

F. SEVERABILITY SAVINGS CLAUSE

1. If during the term of this Agreement, any law or any order issued by a court or other tribunal of competent jurisdiction shall render invalid or restrain compliance with or enforcement of any provision of this Agreement, such provision shall be inoperative so long as such law or order shall remain in effect, but all other provisions of this Agreement shall not be affected thereby and shall continue in full force and effect.
2. In the event of suspension or invalidation of any Article or Section of this Agreement, the parties mutually agree to meet and negotiate within ninety (90) days after such determination for the purpose of arriving at a mutually satisfactory replacement for such Article or Section.

G. CITY VEHICLE USE

City vehicles shall be assigned at the discretion of the Chief of Police.

H. CREDIT FOR TRAINING

Participation in and completion of special training courses may be considered in making salary increases and promotions. Evidence of such activity shall be filed by the employee with the Personnel Officer. Additional pay may be granted any City employee for training and certification in a training and certification program established by employees department head and approved by the City Manager. In the Police Department, all sworn personnel shall be compensated as follows:

1. The pay for an Intermediate Certificate shall be two and one-half percent (2.5 %) of gross pay.
2. The pay for an Advanced Certificate shall be two and one-half percent (2.5 %) of gross pay.
3. Police Officer Training Incentive Program - In order to encourage police officers to proceed beyond the Intermediate Certificate provided for in Penal Code Sections 13500 and Chapter 2 of the California Administrative Code, the City shall pay an additional two and one-half percent (2.5%) of base pay for the possession of a valid "Advanced P.O.S.T. certificate beginning the first pay period in July 2008, for a total of 5% base pay.
4. Bachelor Degree Incentive Program - City shall pay an incentive of five-percent (5%) for the possession of a Bachelor's degree from a recognized college or university beginning July 1, 2009. Such degree must be in a law enforcement field, social sciences, or related field as determined by the City Manager or designee.
5. In each fiscal year during the term of this two-year agreement, City will authorize leave time and pay for attendance for one (1) representative of the Auburn Police Officer's Association to attend a mutually agreed upon professional seminar, workshop or conference for POA related training. City Manager and/or other City representative will also attend with the Auburn Police Officer's Association representative.

I. PUBLIC SECURITY EVENTS

To assure maximum safety for officers assigned to public security events, two (2) officers will be assigned to such activities where crowd control measures are required.

J. TUITION REIMBURSEMENT

With the advance written approval of the City, and upon satisfactory completion with a grade "C" or better, the City shall reimburse a permanent employee for the cost of tuition and books from an accredited college, university, or trade school (on a course-by-course basis) for courses having a strong nexus to the employee's job classification and will benefit

to the City. All classes will be taken on the employee's own time. Reimbursement shall not exceed \$1,200 per employee per fiscal year. This Section (Tuition Reimbursement) shall be funded in the amount of \$12,000 as part of the 2015-2016 City Budget.

K. ON DUTY FITNESS PROGRAM

The Chief of Police shall implement an "On Duty Fitness Program". This program shall be designed to maximize employee fitness while taking into consideration the current levels of service provided by the City of Auburn.

L. LATERAL HIRE -- POLICE OFFICER

As a recruitment incentive for the lateral hire of a police officer, the City may, at its discretion, offer one or more of the following employment enhancements to employees hired after the date of adoption of this agreement. Any pay/benefits granted under this section shall be considered an advance payment and not in addition to any payment described in the below sections:

- (1) Accrual of vacation leave pursuant to Section 7.A at the rate consistent with the years of service as a police officer or deputy sheriff.
- (2) Training and education incentives pursuant to Section 10.H.
- (3) Salary step placement consistent with the candidate's previous experience and skills.
- (4) Longevity Pay pursuant to Section 5.I, consistent with a candidates total service as a police officer or deputy sheriff.
- (5) Up to a 4% Retention Credit pursuant to Section 5.A.4.

M. JOINT LABOR-MANAGEMENT COMMITTEE

In order to encourage open communication and resolve matters of mutual concern, APOA and the City agree to create a joint labor-management committee. The committee will be governed by the following:

1. The committee shall consist of two representatives of the APOA and two representatives of Police Department management.
2. The committee will meet every other month. Committee meetings will be held at either Auburn City Hall or the Auburn Police Department.
3. The agenda for each meeting will be decided at the conclusion of the prior meeting. Either party may place items on the agenda, including but not limited to, staffing,

employee morale, assignments, and safety equipment.

4. Minutes will be taken of each meeting and a copy of such minutes shall be distributed to each Committee member.
5. The first meeting of the committee shall be held within thirty (30) days after ratification of this Memorandum of Understanding by the City Council.
6. The final decision regarding implementation of any recommendation of the Committee shall rest with the City Manager.

TERM OF AGREEMENT

This Memorandum of Understanding shall be effective as of July 1, 2021, and shall expire June 30, 2023.


AUBURN POLICE OFFICERS
"Association"


Adam Cline
APOA President

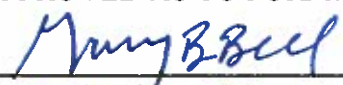

Dan Koontz
Labor Representative

CITY OF AUBURN
"City"


John W. Donlevy, Jr.
City Manager


~~Shari Harris Human Resources Manager~~
Nathan Bagwill, Director, Administrative
Services

APPROVED AS TO FORM:


Gary Bell, City Attorney

Date 2/14/2022

City of Auburn - APOA
Job Classification Salary Range
Salary Schedule effective July 1, 2019
Salary range A - step A 2% COLA, steps B-F at 5%

[illegible]131

City of Auburn - APOA Job Classification Salary Range Salary Schedule effective July 1, 2020 2% Retro effective 7/1/20-6/30/21- Once Approved by Council Salary Range A - step A 2% COLA, steps B-F at 5%												
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Police Officer												
Pay Range			41									
Salary Range A	Step	A	B	C	D	E	F					
	Hourly	\$ 28.31	\$ 29.73	\$ 31.22	\$ 32.78	\$ 34.42	\$ 36.15					
	Bi-Weekly	\$ 2,264.80	\$ 2,378.40	\$ 2,497.60	\$ 2,622.40	\$ 2,753.60	\$ 2,892.00					
	Monthly	\$ 4,907	\$ 5,153	\$ 5,411	\$ 5,682	\$ 5,966	\$ 6,266					
	Annually	\$ 58,885	\$ 61,837	\$ 64,936	\$ 68,181	\$ 71,592	\$ 75,191					

Police Trainee												
Pay Range			37									
Salary Range A	Step	A	B	C	D	E	F					
	Hourly	\$ 25.58	\$ 26.86	\$ 28.20	\$ 29.61	\$ 31.09	\$ 32.64					
	Bi-Weekly	\$ 2,046.40	\$ 2,148.80	\$ 2,256.00	\$ 2,368.80	\$ 2,487.20	\$ 2,611.20					
	Monthly	\$ 4,433.87	\$ 4,655.73	\$ 4,888.00	\$ 5,132.40	\$ 5,388.93	\$ 5,657.60					
	Annually	\$ 53,206.40	\$ 55,868.80	\$ 58,656.00	\$ 61,588.80	\$ 64,667.20	\$ 67,891.20					

Police Detective												
Pay Range			43									
Salary Range A	Step	A	B	C	D	E	F					
	Hourly	\$ 30.07	\$ 31.57	\$ 33.15	\$ 34.81	\$ 36.55	\$ 38.38					
	Bi-Weekly	\$ 2,405.60	\$ 2,525.60	\$ 2,652.00	\$ 2,784.80	\$ 2,924.00	\$ 3,070.40					
	Monthly	\$ 5,212.13	\$ 5,472.13	\$ 5,746.00	\$ 6,033.73	\$ 6,335.33	\$ 6,652.53					
	Annually	\$ 62,545.60	\$ 65,665.60	\$ 68,952.00	\$ 72,404.80	\$ 76,024.00	\$ 79,830.40					

<p style="text-align: center;">City of Auburn - APOA Job Classification Salary Range Salary Schedule effective July 1, 2021 1% COLA - Once approved by Council Salary range A - step A 1% COLA, steps B-F at 5%</p>											

Police Officer	Pay Range		41								
	Step	A	B	C	D	E	F				
	Hourly	\$ 28.59	\$ 30.02	\$ 31.52	\$ 33.10	\$ 34.76	\$ 36.50				
	Bi-Weekly	\$ 2,287.20	\$ 2,401.60	\$ 2,521.60	\$ 2,648.00	\$ 2,780.80	\$ 2,920.00				
	Monthly	\$ 4,956	\$ 5,203	\$ 5,463	\$ 5,737	\$ 6,025	\$ 6,327				
	Annually	\$ 59,467	\$ 62,440	\$ 65,560	\$ 68,847	\$ 72,299	\$ 75,919				

Police Trainee	Pay Range		37								
	Step	A	B	C	D	E	F				
	Hourly	\$ 25.84	\$ 27.13	\$ 28.49	\$ 29.91	\$ 31.41	\$ 32.98				
	Bi-Weekly	\$ 2,067.20	\$ 2,170.40	\$ 2,279.20	\$ 2,392.80	\$ 2,512.80	\$ 2,638.40				
	Monthly	\$ 4,478.93	\$ 4,702.53	\$ 4,938.27	\$ 5,184.40	\$ 5,444.40	\$ 5,716.53				
	Annually	\$ 53,747.20	\$ 56,430.40	\$ 59,259.20	\$ 62,212.80	\$ 65,332.80	\$ 68,598.40				

Police Detective	Pay Range		43								
	Step	A	B	C	D	E	F				
	Hourly	\$ 30.37	\$ 31.89	\$ 33.48	\$ 35.15	\$ 36.91	\$ 38.76				
	Bi-Weekly	\$ 2,429.60	\$ 2,551.20	\$ 2,678.40	\$ 2,812.00	\$ 2,952.80	\$ 3,100.80				
	Monthly	\$ 5,264.13	\$ 5,527.60	\$ 5,803.20	\$ 6,092.67	\$ 6,397.73	\$ 6,718.40				
	Annually	\$ 63,169.60	\$ 66,331.20	\$ 69,638.40	\$ 73,112.00	\$ 76,772.80	\$ 80,620.80				

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AUBURN CITY COUNCIL

Item 8

STAFF REPORT

"Endurance Capital of the World"

To: Honorable Mayor and City Council Members
From: John W. Donlevy, Jr; City Manager
Nathan Bagwill; Administrative Services Director
Meeting Date: December 13, 2021
Business Type: Consent Calendar
Subject: Update to MOU for Auburn Police Officers Association

The Issue

Shall the City Council receive approve the Memorandum of Understanding between the Auburn Police Officers Association and the City of Auburn?

Conclusion and Recommendation

By RESOLUTION adopt the Memorandum of Understanding between the Auburn Police Officers Association and the City of Auburn period July 1, 2021 through June 23, 2023 and authorize the City Manager to sign on behalf of the City.

Background

As a means to secure a current Memorandum of Understanding (MOU) between the City of Auburn and the Auburn Police Officers Association (APOA), the City has been negotiating with APOA for the last several months.

The negotiation process concluded when the APOA and the City reached a tentative agreement on a successor MOU pending final City Council approval. The term of the MOU is for two years spanning from July 1, 2021- June 30, 2023.

Salary Increases

July 1, 2021- Patrol Officers shall receive 3% COLA- 2% will be retro from July 1, 2020- June 30, 2021 and 1% salary increase effective July 1, 2021. Detectives shall receive 3% on the first pay period following approval of the MOU.

January 2022- 2.5% one-time bonus (ARA Funding)

July 2022- 3% COLA



January 2023- 2.5% one-time bonus (ARA Funding)

Alternatives Available to Council; Implications of Alternatives

1. Adopt a resolution to authorize the City Manager to execute the Memorandum of Understanding between the Auburn Police Officers Association and the City of Auburn for the period of July 1, 2021 through June 23, 2023.
2. Do not adopt the resolution and direct the City Manager accordingly.

Fiscal Impact

It is mutually agreed between City of Auburn and the APOA that the City may have limited financial ability to pay future salary increases, and such ability is entirely dependent upon the economic conditions that prevail in the community and legislative actions of the State of California. The City Manager, Administrative Services Director and representatives of the Association will meet each year, after the adoption of budgets for both the City of Auburn and the State of California, to review the status of forecasts for all major revenue components for the City's General Fund.

The estimated impacts to the General Fund are consistent with the budget set-aside that was adopted in conjunction with the current fiscal year budget:

FY2020-21	\$28,372
FY2021-22	\$14,186
FY2022-23	\$43,835

Attachments

Memorandum of Understanding between the Auburn Police Officers Association (APOA) and the City of Auburn & Salary Schedule

Resolution

RESOLUTION NO. 21-
RESOLUTION AUTHORIZING EXECUTION OF AUBURN POLICE OFFICERS
ASSOCIATION MEMORANDUM OF UNDERSTANDING

THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY APPROVE:

That the City Council of the City of Auburn does hereby adopt the Memorandum of Understanding between the Auburn Police Officers Association and the City of Auburn for the period July 1, 2021 through June 30, 2023, and authorizes the City Manager to sign on behalf of the City.

DATED: December 13, 2021

Sandy Amara, Mayor

ATTEST:

Amy Lind, City Clerk

I, Amy Lind, City Clerk of the City of Auburn, hereby certify that the foregoing resolution was duly passed at a regular meeting of the City Council of the City of Auburn held on the 13th day of December by the following vote on roll call:

Ayes:

Noes:

Absent:

Amy Lind, City Clerk

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this "Agreement") is made and entered into effective December __, 2021 (the "Effective Date") by and among the City of Auburn, a public entity and political subdivision of the State of California (the "City"), the Auburn Police Officers' Association (the "APOA"), and City employees currently serving as detectives for the Auburn Police Department (the "Detectives," who are signatories hereto) (collectively, the "Parties") and, in exchange for the settlement payments and other consideration provided herein, the Parties extinguish all rights, claims and actions as against each other with respect to the subject matter of this Agreement.

RECITALS

- A. In April 2021, the City undertook a limited review of potential underpayment of the Detectives' salaries and determined it miscalculated the Detectives' pay from 2016 through April 2021. As a result, the City issued to each detective a lump sum payment representing the perceived amount of underpayment from 2016 through April 2021 and updated the Detectives' pay moving forward.
- B. In August 2021, the City undertook further review of potential underpayment of the Detectives' pay and determined the Detectives were paid correctly from 2016 through April 2021. As a result, the City returned the Detectives' pay to the corrected rate and sought repayment of amounts the City understood to be overpaid.
- C. On August 20, 2021, APOA submitted a grievance to City Manager John Donlevy regarding four issues: (1) management of the Health Savings Account (the "HSA") under the terms of the Memorandum of Understanding between the City and APOA (the "MOU"); (2) underpayment of the Detectives by \$.60/hour; (3) failure to pay meal allowances per Section 6.0 of the MOU; and (4) underpayment of APOA members by either \$.01/hour or \$.07/hour, based on rounding errors (hereinafter, the "Grievance").
- D. On August 27, 2021, City Manager John Donlevy responded by letter to the Grievance that all portions of the grievance were without merit except issues raised regarding management of the HSA, which were then subject to an internal audit.
- E. On September 3, 2021, APOA submitted a letter seeking the Grievance be submitted to mediation under Sections 3.0.6.a.e. of the MOU, which was scheduled for December 17, 2021.
- F. By entering into this Agreement, it is the intent of the Parties to fully resolve all issues and claims contained within the Grievance, without further need for mediation, litigation, or other procedure.

AGREEMENT

Therefore, in consideration of the mutual covenants, conditions, and promises contained herein, the Parties acknowledge and agree as follows:

1. **Release and Covenant Not to Sue.** In consideration of the promises set forth herein, both the APOA, on behalf of itself and its officers, directors, agents, employees, affiliates, and assigns, including expressly its members, and the Detectives hereby release and discharge the City, its past, present, and future officers, agents, employees, volunteers, administrators and assigns, from and relinquish any and all past, present, or future claims, demands, obligations, liabilities or causes of action of any nature whatsoever arising from or in any way related to the issues contained in the Grievance and other matters related to employee compensation, whether arising under the Fair Labor Standards Act ("FLSA") or any other federal, state, or local law. Said release shall include, but shall not be limited to, claims, demands, obligations, liabilities or causes of action for compensatory damages, punitive damages, liquidated damages, interest, diminution in value, costs, losses, expenses, compensation, and attorneys' fees whether based on tort, contract, equity, statute, breach of fiduciary duty, or other theories of recovery which the APOA, its members, or the Detectives have or which they may later accrue or acquire. The APOA and the Detectives further covenant that they shall not sue, nor by its acts or omissions cause to be sued, the City or its past, present, or future officers, agents, employees, volunteers, administrators and assigns with respect to the subject matter of this settlement, including without limitation the subject matter of the Grievance.

2. **Release and Covenant Not to Sue.** In consideration of the promises set forth herein, the City, on behalf of itself and its officers, directors, agents, employees, affiliates, and assigns, hereby releases and discharges the APOA and the Detectives from and relinquishes any and all past, present, or future claims, demands, obligations, liabilities or causes of action of any nature whatsoever arising from or in any way related to alleged overpayment of past wages, compensation, benefits, incentives, stipends, or other amounts due the Detectives, whether arising under federal, state, or local law. Said release shall include, but shall not be limited to, claims, demands, obligations, liabilities or causes of action for compensatory damages, punitive damages, liquidated damages, interest, diminution in value, costs, losses, expenses, compensation, and attorneys' fees whether based on tort, contract, equity, statute, breach of fiduciary duty, or other theories of recovery which the City has or may later accrue or acquire. The City further covenants that it shall not sue, nor by its acts or omissions cause to be sued, the APOA, its members, or the Detectives, including past, present, or future officers, agents, employees, volunteers, administrators and assigns with respect to the alleged overpayment of the Detectives.

2. **Waiver of Civil Code § 1542.** The City, the APOA, on behalf of themselves and their officers, directors, agents, employees, affiliates, and assigns, including expressly the APOA's members, and the Detectives hereby acknowledge that the basis, nature and extent of their released claims are not capable of being fully known, understood, anticipated, or appreciated at this time, but have nonetheless agreed to enter into this Agreement to release all such claims. Accordingly, the City, the APOA and its members, and the Detectives hereby waive and relinquish any and all rights and benefits which they may have under the provisions of Civil Code section 1542, or any similar laws of any state or territory of the United States of America, or any other jurisdiction.

Civil Code section 1542 states as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE

RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

3. Specific Actions of the Parties.

- A. The City shall not seek repayment from the Detectives of the lump sum payment issued to the Detectives in April 2021, or any other amount(s) the City believes to be overpaid to the Detectives related to the matters raised in the Grievance or otherwise.
- B. Within five days of execution of this Agreement, APOA shall approve and sign the side letter, attached hereto as Exhibit "A" and incorporated herein by this reference, establishing an updated pay scale for the Detectives. The City shall cause the side letter to be placed on the agenda for the December 13, 2021 meeting of the Auburn City Council.
- C. The APOA shall not provide support, including the provision of legal representation, to any subsequent claims or litigation made or filed by any past or present APOA member related to the Grievance or any other rights waived under this Agreement. The APOA represents and warrants that it has received the necessary authorization to enter into this Agreement on behalf of its members and Employees.

4. No Admission of Liability. The execution of this Agreement effects the settlement of claims which are contested and denied. The purpose of this Agreement is for the Parties to buy their peace and avoid further litigation. Nothing contained herein shall be construed as an admission by any party of the truth of any allegation, claim, or contention against any other party. Nor shall this Agreement be construed as an admission of any party of any liability of any kind to any other party. Each party acknowledges that the other expressly denies that any of them is in any way liable or obligated to the other.

5. Supervision and Approval. The APOA represents and warrants that it has discussed and reviewed this Agreement with its members and that each of them has been made aware of their right to have this Agreement supervised and approved by the Secretary of the Department of Labor, pursuant to 29 U.S.C. 216(c).

6. Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to the matters set forth herein. There are no representations, covenants or undertakings other than those expressed, implied, or referred to herein. The Parties acknowledge that no other party or any agent or attorney of any other party has made any promise, representation, or warranty whatsoever, express or implied or statutory, not contained or referred to herein, concerning the subject matter hereof, to induce either party to execute this Agreement in reliance on any such promise, representation, or warranty not specifically contained or referred to herein. The Parties fully understand that if the facts with respect to which they have executed this Agreement are found hereafter to be different from the facts now believed by them to be true,

they each expressly accept and assume the risk of such possible differences in facts and agree that this Agreement shall remain effective notwithstanding such differences.

7. **Advice of Counsel.** The Parties hereby acknowledge and state that they have read this Agreement in its entirety, that they understand the contents thereof, that their execution of this Agreement is voluntary and not the subject of duress or undue influence, that this Agreement is intended to resolve disputed claims and the consideration provided herein is fair and reasonable, and that the Parties have relied upon and had the opportunity to seek the legal advice of the attorneys of their own choice and such other persons as they may have deemed appropriate, prior to executing this Agreement.

8. **Construction.** This Agreement has been arrived at through negotiations. Each party and counsel for each party, if any, has participated in the drafting of this Agreement and, accordingly, normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

9. **Severability.** If any provision of this Agreement as applied to any party or to any circumstance shall be adjudged by the court to be void and unenforceable, the same shall in no way affect the validity and enforceability of any other provision or of the Agreement as a whole.

10. **Waiver, Modification, and Amendment.** No provision herein may be waived unless in writing and signed by the party or parties whose rights are thereby waived. Waiver of one provision herein shall not be deemed to be a waiver of any other provision herein. This Agreement may be modified or amended only by written agreement of the Parties.

11. **Specific Performance.** The terms of this Agreement are contractual in nature and not mere recitals and the obligations of the Parties are acknowledged to be capable of performance through specific performance. This Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding which may be instituted, prosecuted, or attempted concerning the Grievance or the matters set forth herein.

12. **Representations; No Assignment or Undisclosed Claims.** Each of the Parties to this Agreement represents to the other Parties that it has not assigned, transferred or purported to assign or transfer to any person, corporation or other legal entity, either voluntarily or involuntarily, any claims, cause of action or right based on or arising out of or in connection with any matter, fact or thing as to which this Agreement is given. Each of the Parties further represents that it has the sole right and exclusive authority to execute this Agreement. Each of the Parties further represents and warrants to the other Parties that it is not aware of and does not now possess any undisclosed claims against the other, including without limitation any claims, cause of action or right based on or arising out of or in connection with any matter, fact or thing whether or not related to that as to which this Agreement is given.

13. **Binding Effect.** This Agreement is not intended to and shall not confer upon any other person any rights or remedies hereunder or otherwise with respect to the subject matter hereof. Notwithstanding any other term set forth herein, this Agreement shall be binding upon and

inure to the benefit of the Parties' present and future parent companies, holding companies, subsidiaries, affiliates, officers, agents, successors, representatives, heirs and assigns.

14. **Governing Law.** This Agreement shall be construed and interpreted under and according to the laws of the State of California. Any action arising out of this Agreement shall be brought in the Superior Court of California for the County of Placer.

15. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute a complete and fully executed copy of this Agreement.

16. **Enforcement.** The Parties hereby acknowledge, agree, and stipulate that each has the right to enforce any provision of this Agreement by filing any appropriate action, proceeding, or motion, including, but not limited to, a motion pursuant to Code of Civil Procedure section 664.6.

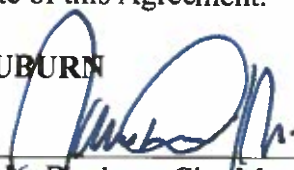
17. **Additional Documents.** The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below, the latest of which shall be deemed the effective date of this Agreement.

CITY OF AUBURN


Dated: 12-9-2021


John Donlevy, City Manager

APOA

Dated: 12/07/2021

Auburn Police Officers' Association (APOA)

By: 
Adam Cline, President

DETECTIVES

Dated: 12/7/2021


Ian Ackard

Dated: 12/07/2021


Angela McCollough

Dated: 12/07/2021


Adam Cline

Dated: 12/07/2021


Carlos Castaner

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this "Agreement") is made and entered into effective December __, 2021 (the "Effective Date") by and among the City of Auburn, a public entity and political subdivision of the State of California (the "City"), the Auburn Police Officers' Association (the "APOA"), and City employees currently serving as detectives for the Auburn Police Department (the "Detectives," who are signatories hereto) (collectively, the "Parties") and, in exchange for the settlement payments and other consideration provided herein, the Parties extinguish all rights, claims and actions as against each other with respect to the subject matter of this Agreement.

RECITALS

- A. In April 2021, the City undertook a limited review of potential underpayment of the Detectives' salaries and determined it miscalculated the Detectives' pay from 2016 through April 2021. As a result, the City issued to each detective a lump sum payment representing the perceived amount of underpayment from 2016 through April 2021 and updated the Detectives' pay moving forward.
- B. In August 2021, the City undertook further review of potential underpayment of the Detectives' pay and determined the Detectives were paid correctly from 2016 through April 2021. As a result, the City returned the Detectives' pay to the corrected rate and sought repayment of amounts the City understood to be overpaid.
- C. On August 20, 2021, APOA submitted a grievance to City Manager John Donlevy regarding four issues: (1) management of the Health Savings Account (the "HSA") under the terms of the Memorandum of Understanding between the City and APOA (the "MOU"); (2) underpayment of the Detectives by \$.60/hour; (3) failure to pay meal allowances per Section 6.0 of the MOU; and (4) underpayment of APOA members by either \$.01/hour or \$.07/hour, based on rounding errors (hereinafter, the "Grievance").
- D. On August 27, 2021, City Manager John Donlevy responded by letter to the Grievance that all portions of the grievance were without merit except issues raised regarding management of the HSA, which were then subject to an internal audit.
- E. On September 3, 2021, APOA submitted a letter seeking the Grievance be submitted to mediation under Sections 3.0.6.a.e. of the MOU, which was scheduled for December 17, 2021.
- F. By entering into this Agreement, it is the intent of the Parties to fully resolve all issues and claims contained within the Grievance, without further need for mediation, litigation, or other procedure.

AGREEMENT

Therefore, in consideration of the mutual covenants, conditions, and promises contained herein, the Parties acknowledge and agree as follows:

1. **Release and Covenant Not to Sue.** In consideration of the promises set forth herein, both the APOA, on behalf of itself and its officers, directors, agents, employees, affiliates, and assigns, including expressly its members, and the Detectives hereby release and discharge the City, its past, present, and future officers, agents, employees, volunteers, administrators and assigns, from and relinquish any and all past, present, or future claims, demands, obligations, liabilities or causes of action of any nature whatsoever arising from or in any way related to the issues contained in the Grievance and other matters related to employee compensation, whether arising under the Fair Labor Standards Act ("FLSA") or any other federal, state, or local law. Said release shall include, but shall not be limited to, claims, demands, obligations, liabilities or causes of action for compensatory damages, punitive damages, liquidated damages, interest, diminution in value, costs, losses, expenses, compensation, and attorneys' fees whether based on tort, contract, equity, statute, breach of fiduciary duty, or other theories of recovery which the APOA, its members, or the Detectives have or which they may later accrue or acquire. The APOA and the Detectives further covenant that they shall not sue, nor by its acts or omissions cause to be sued, the City or its past, present, or future officers, agents, employees, volunteers, administrators and assigns with respect to the subject matter of this settlement, including without limitation the subject matter of the Grievance.

2. **Release and Covenant Not to Sue.** In consideration of the promises set forth herein, the City, on behalf of itself and its officers, directors, agents, employees, affiliates, and assigns, hereby releases and discharges the APOA and the Detectives from and relinquishes any and all past, present, or future claims, demands, obligations, liabilities or causes of action of any nature whatsoever arising from or in any way related to alleged overpayment of past wages, compensation, benefits, incentives, stipends, or other amounts due the Detectives, whether arising under federal, state, or local law. Said release shall include, but shall not be limited to, claims, demands, obligations, liabilities or causes of action for compensatory damages, punitive damages, liquidated damages, interest, diminution in value, costs, losses, expenses, compensation, and attorneys' fees whether based on tort, contract, equity, statute, breach of fiduciary duty, or other theories of recovery which the City has or may later accrue or acquire. The City further covenants that it shall not sue, nor by its acts or omissions cause to be sued, the APOA, its members, or the Detectives, including past, present, or future officers, agents, employees, volunteers, administrators and assigns with respect to the alleged overpayment of the Detectives.

2. **Waiver of Civil Code § 1542.** The City, the APOA, on behalf of themselves and their officers, directors, agents, employees, affiliates, and assigns, including expressly the APOA's members, and the Detectives hereby acknowledge that the basis, nature and extent of their released claims are not capable of being fully known, understood, anticipated, or appreciated at this time, but have nonetheless agreed to enter into this Agreement to release all such claims. Accordingly, the City, the APOA and its members, and the Detectives hereby waive and relinquish any and all rights and benefits which they may have under the provisions of Civil Code section 1542, or any similar laws of any state or territory of the United States of America, or any other jurisdiction.

Civil Code section 1542 states as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE

RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

3. Specific Actions of the Parties.

- A. The City shall not seek repayment from the Detectives of the lump sum payment issued to the Detectives in April 2021, or any other amount(s) the City believes to be overpaid to the Detectives related to the matters raised in the Grievance or otherwise.
- B. Within five days of execution of this Agreement, APOA shall approve and sign the side letter, attached hereto as Exhibit "A" and incorporated herein by this reference, establishing an updated pay scale for the Detectives. The City shall cause the side letter to be placed on the agenda for the December 13, 2021 meeting of the Auburn City Council.
- C. The APOA shall not provide support, including the provision of legal representation, to any subsequent claims or litigation made or filed by any past or present APOA member related to the Grievance or any other rights waived under this Agreement. The APOA represents and warrants that it has received the necessary authorization to enter into this Agreement on behalf of its members and Employees.

4. No Admission of Liability. The execution of this Agreement effects the settlement of claims which are contested and denied. The purpose of this Agreement is for the Parties to buy their peace and avoid further litigation. Nothing contained herein shall be construed as an admission by any party of the truth of any allegation, claim, or contention against any other party. Nor shall this Agreement be construed as an admission of any party of any liability of any kind to any other party. Each party acknowledges that the other expressly denies that any of them is in any way liable or obligated to the other.

5. Supervision and Approval. The APOA represents and warrants that it has discussed and reviewed this Agreement with its members and that each of them has been made aware of their right to have this Agreement supervised and approved by the Secretary of the Department of Labor, pursuant to 29 U.S.C. 216(c).

6. Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to the matters set forth herein. There are no representations, covenants or undertakings other than those expressed, implied, or referred to herein. The Parties acknowledge that no other party or any agent or attorney of any other party has made any promise, representation, or warranty whatsoever, express or implied or statutory, not contained or referred to herein, concerning the subject matter hereof, to induce either party to execute this Agreement in reliance on any such promise, representation, or warranty not specifically contained or referred to herein. The Parties fully understand that if the facts with respect to which they have executed this Agreement are found hereafter to be different from the facts now believed by them to be true,

they each expressly accept and assume the risk of such possible differences in facts and agree that this Agreement shall remain effective notwithstanding such differences.

7. **Advice of Counsel.** The Parties hereby acknowledge and state that they have read this Agreement in its entirety, that they understand the contents thereof, that their execution of this Agreement is voluntary and not the subject of duress or undue influence, that this Agreement is intended to resolve disputed claims and the consideration provided herein is fair and reasonable, and that the Parties have relied upon and had the opportunity to seek the legal advice of the attorneys of their own choice and such other persons as they may have deemed appropriate, prior to executing this Agreement.

8. **Construction.** This Agreement has been arrived at through negotiations. Each party and counsel for each party, if any, has participated in the drafting of this Agreement and, accordingly, normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

9. **Severability.** If any provision of this Agreement as applied to any party or to any circumstance shall be adjudged by the court to be void and unenforceable, the same shall in no way affect the validity and enforceability of any other provision or of the Agreement as a whole.

10. **Waiver, Modification, and Amendment.** No provision herein may be waived unless in writing and signed by the party or parties whose rights are thereby waived. Waiver of one provision herein shall not be deemed to be a waiver of any other provision herein. This Agreement may be modified or amended only by written agreement of the Parties.

11. **Specific Performance.** The terms of this Agreement are contractual in nature and not mere recitals and the obligations of the Parties are acknowledged to be capable of performance through specific performance. This Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding which may be instituted, prosecuted, or attempted concerning the Grievance or the matters set forth herein.

12. **Representations; No Assignment or Undisclosed Claims.** Each of the Parties to this Agreement represents to the other Parties that it has not assigned, transferred or purported to assign or transfer to any person, corporation or other legal entity, either voluntarily or involuntarily, any claims, cause of action or right based on or arising out of or in connection with any matter, fact or thing as to which this Agreement is given. Each of the Parties further represents that it has the sole right and exclusive authority to execute this Agreement. Each of the Parties further represents and warrants to the other Parties that it is not aware of and does not now possess any undisclosed claims against the other, including without limitation any claims, cause of action or right based on or arising out of or in connection with any matter, fact or thing whether or not related to that as to which this Agreement is given.

13. **Binding Effect.** This Agreement is not intended to and shall not confer upon any other person any rights or remedies hereunder or otherwise with respect to the subject matter hereof. Notwithstanding any other term set forth herein, this Agreement shall be binding upon and

inure to the benefit of the Parties' present and future parent companies, holding companies, subsidiaries, affiliates, officers, agents, successors, representatives, heirs and assigns.

14. **Governing Law.** This Agreement shall be construed and interpreted under and according to the laws of the State of California. Any action arising out of this Agreement shall be brought in the Superior Court of California for the County of Placer.

15. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute a complete and fully executed copy of this Agreement.

16. **Enforcement.** The Parties hereby acknowledge, agree, and stipulate that each has the right to enforce any provision of this Agreement by filing any appropriate action, proceeding, or motion, including, but not limited to, a motion pursuant to Code of Civil Procedure section 664.6.

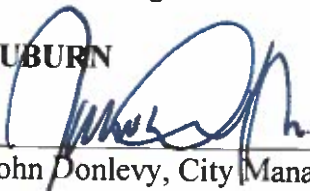
17. **Additional Documents.** The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below, the latest of which shall be deemed the effective date of this Agreement.

CITY OF AUBURN


Dated: 12-9-2021


John Donlevy, City Manager

APOA

Dated: 12/07/2021

Auburn Police Officers' Association (APOA)

By: 
Adam Cline, President

DETECTIVES


Dated: 12/7/2021


Ian Ackard

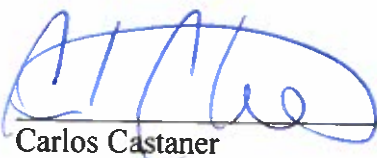
Dated: 12/07/2021


Angela McCollough

Dated: 12/07/2021


Adam Cline

Dated: 12/07/2021


Carlos Castaner